

Mail Stop Interference  
P.O. Box 1450  
Alexandria Va 22313-1450  
Tel: 571-272-9797  
Fax: 571-273-0042

Paper 1

Filed:  
July 20, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

HAROLD R. GARNER  
Junior Party  
(Application 09/999,239),

v.

CALVIN F. QUATE and DAVID STERN  
Senior Party  
(Patent 6,271,957).

Patent Interference No. 105,445  
(Technology Center 1600)

**MAILED**

JUL 20 2006

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

**DECLARATION - Bd.R. 203(d)<sup>1</sup>**

1 **Part A. Declaration of interference**

2 An interference is declared (35 U.S.C. § 135(a)) between the above-identified  
3 parties. Details of the application(s), patent (if any), reissue application (if any),  
4 count(s) and claims designated as corresponding or as not corresponding to the  
5 count(s) appear in Parts E and F of this DECLARATION.

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<sup>1</sup> "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1        **Part B. Judge managing the interference**

2        Administrative Patent Judge Jameson Lee has been designated to manage the  
3 interference. Bd. R. 104(a).

4        **Part C. Standing order**

5        A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this  
6 DECLARATION. The STANDING ORDER applies to this interference.

7        **Part D. Initial conference call**

8        A telephone conference call to discuss the interference is set for **1:00 p.m. on**  
9 **September 14, 2006** (the Board will initiate the call).

10       No later than **four business days** prior to the conference call, each party shall  
11 file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd. R. 120; Bd. R. 204;  
12 SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

13       A sample schedule for taking action during the motion phase appears as Form 2  
14 in the STANDING ORDER. Counsel are encouraged to discuss the schedule prior to  
15 the conference call and to agree on dates for taking action. A typical motion period  
16 lasts approximately eight (8) months. Counsel should be prepared to justify any  
17 request for a shorter or longer period.

**Part E. Identification and order of the parties**

Junior Party

Named inventors: Harold R. Garner, Flower Mound, TX  
Involved Application: 09/999,239, filed November 29, 2001  
Title: Digital optical chemistry micromirror imager  
Assignee: Nimblegen Systems Inc.

Senior Party

Named Inventors: Calvin F. Quate, Stanford, CA  
David Stern, Mountain View, CA  
Involved Patent: 6,271,957, granted August 7, 2001  
based on application 09/318,775, filed  
May 26, 1999  
Title: Methods involving direct write optical  
Lithography  
Assignee: Affymetrix, Inc.

The senior party is assigned exhibit numbers 1001-1999. The junior party is assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1); SO ¶ 154.2.1. The senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

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Claim 28 of Garner's Application 09/999,239.

**Garner: 28-55 and 57-63**

The claims of the parties which correspond to Count 1 are:

Garner: 28-55 and 57-63<sup>2</sup>

The claims of the parties which do not correspond to Count 1, and therefore are involved in the interference, are:

Garner: None

Quate:       None

The parties are accorded the following benefit for Count 1:

Garner: Application 09/776,202, filed February 2, 2001  
Application 09/326,526, filed June 4, 1999  
Application 60/087,948, filed June 4, 1998

Quate: Application 60/087,333, filed May 29, 1998

### Part G. Heading to be used on papers

2 Garner's request for interference filed October 24, 2005, did not expressly identify which of his application claims correspond to the count as required by 37 CFR § 41.202(a)(2) (requiring identification of all claims that applicant believes interfere and show how they correspond to the count). Accordingly, all of Garner's claims are considered conceded to correspond to the proposed count.

1 The following heading must be used on all papers filed in this interference, see

2 SO ¶ 106.1.1:

3  
4 UNITED STATES PATENT AND TRADEMARK OFFICE

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6  
7 BEFORE THE BOARD OF PATENT APPEALS  
8 AND INTERFERENCES

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11 HAROLD R. GARNER  
12 Junior Party  
13 (Application 09/999,239),

14  
15 v.

16  
17 CALVIN F. QUATE and DAVID STERN  
18 Senior Party  
19 (Patent 6,271,957).

20  
21 Patent Interference No. 105,445  
22 (Technology Center 1600)

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25 **Part H. Order form for requesting file copies**

26 When requesting copies of files, use of SO Form 4 will greatly expedite  
27 processing of the request. Please attach a copy of Parts E and F of this  
28 DECLARATION with a hand-drawn circle around the patents and applications for which  
29 a copy of a file wrapper is requested.

/ss/Jameson Lee  
Administrative Patent Judge

Enc:

Copy of STANDING ORDER  
Form PTO-850  
Copy U.S. Patent 6,271,957  
Copy of claims of Application 09/999,239

Revised 3 January 2006

cc (via overnight delivery):

Attorney for GARNER:

Nicholas J. Seay  
QUARLES & BRADY LLP  
1 South Pinckney Street  
Suite 600  
Madison, WI 53703

Tel: 608-251-5000

Attorney for QUATE:

Oliver Ashe  
GREENBLUM & BERNSTEIN, P.L.C.  
1950 Roland Clarke Place  
Reston, VA 20191

Tel: 703-716-1191

Filed September 13, 2006

1 Merits Panel  
2 Mail Stop Interference  
3 P.O. Box 1450  
4 Alexandria VA 22313-1450  
5 Tel: 571-272-9797  
6 Fax: 571-273-0042  
7

8 UNITED STATES PATENT AND TRADEMARK OFFICE  
9 BEFORE THE BOARD OF PATENT APPEALS  
10 AND INTERFERENCES  
11 (Administrative Patent Judge Jameson Lee)  
12

13 HAROLD R. GARNER  
14 Junior Party  
15 (Application 09/999,239),  
16  
17

18 v.  
19

20 CALVIN F. QUATE  
21 and  
22 DAVID STERN  
23 Senior Party  
24 (Patent 6,271,957).  
25 Patent Interference No. 105,445 (JL)  
26 (Technology Center 1600)  
27  
28

29 Before SCHAFER, LEE, and MOORE, *Administrative Patent Judges*.  
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31 MOORE, *Administrative Patent Judge*.  
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33 **JUDGMENT - Bd. R. 127(a)**  
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35 Garner has failed to explain why judgment should not be entered against it based  
36 upon its failure to establish that it could prevail on the issue of priority. 37 CFR §  
37 41.202(d) (2005).  
38

39 Upon consideration of the decision on the Order to Show Cause, it is  
40 **ORDERED** that judgment on priority as to Count 1 (the sole count in the  
41 interference; Paper 1, page 4) is awarded against Junior Party Harold R. Garner  
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3 VIA EMAIL:

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5 Attorney for Garner:

6  
7 Bennett J. Berson  
8 Nicholas J. Seay  
9 QUARLES & BRADY LLP  
10 1 South Pinckney Street  
11 Suite 600  
12 Madison, WI 53703

13  
14 Tel: 608-251-5000  
15 Fax: 608-251-9166

16  
17 [bjb@quarles.com](mailto:bjb@quarles.com)  
18 [njs@quarles.com](mailto:njs@quarles.com)  
19

20  
21 Attorney for Quate:

22  
23 Oliver Ashe  
24 Jill M. Browning  
25 Thomas Malone  
26 Greenblum & Bernstein, P.L.C.  
27 1950 Roland Clarke Place  
28 Reston, VA 20191

29  
30 Tel: 703-716-1191

31  
32 [oashe@gbpatent.com](mailto:oashe@gbpatent.com)  
33 [jbrowning@gbpatent.com](mailto:jbrowning@gbpatent.com)  
34 [Thomas\\_Malone@Affymetrix.com](mailto:Thomas_Malone@Affymetrix.com)  
35